

Bad checks are an expensive and time-consuming problem for both the merchants/businesses and the law enforcement agencies of this community. The goal of the following policy is to reduce the number of bad checks received, as well as reduce the hassle and frustration you may have experienced in the past.

We are all concerned with the number and dollar amount of bad checks being issued in Flathead County. A large part of these can be avoided by taking the necessary precautions and educating your employees in the policies listed below.

FLATHEAD COUNTY ATTORNEY'S BAD CHECK POLICY

The following information should be read carefully and shared with each employee in your business. This information is provided as our effort to reduce the number of bad checks in Flathead County.

When you accept the check, it is increasingly important for you to obtain:

Residence address, not a P.O. Box
Driver's License Number **or**
Social Security number if you can **and/or**
Date of Birth

Law enforcement must be able to positively identify individuals before arrests can be made. An extra moment of time and care at the time of purchase can save months of time in collecting on a bad check

PREVENTION/PROTECTION

1. Obtain accurate information:
 - Full name, street address, phone number
 - Driver's license number and/or date of birth
 - See a valid driver's license or a picture ID
 - Witness the signing of the check and write your initials on the check
2. Never accept:
 - Post-dated checks;
 - Two-party checks;
 - Checks not signed in your presence;
 - Checks to be held until later;
 - Checks given as restitution for bad checks;
 - C.O.D.'s
3. Use caution when accepting the following:
 - Out of state checks;
 - Checks having no or low digits;
 - Counter checks;
 - Checks in excess of the amount of purchase.

PROSECUTION AND STEPS TO FOLLOW:

The County Attorney's Office **cannot** prosecute bad checks that have been or are construed as:

- Post-dated;
- Two-party checks;
- Stop-payment checks;
- Checks with no identification;
- Checks that were taken by people who cannot identify the person signing the check;
- Checks that are over the statute of limitations date (more than one year old);
- Checks where partial payment has been accepted;
- C.O.D.s

RESTITUTION

If a check writer desires to make restitution on a bad checks after the check has been turned over to the County Attorney's Office:

- a. **RESTITUTION MUST BE MADE DIRECTLY TO THE COUNTY ATTORNEY'S OFFICE.** Once checks have been turned over to this office for collection/prosecution the merchant **MUST NOT** accept any monies from the check writer toward the total amount owing, the check writer should be directed to contact this office for inquiries or restitution purposes.
- b. Restitution, if collected, will be sent to the appropriate victim on a monthly basis.

ABOUT SUMITTING CHECKS FOR COLLECTION

We are able to:

- Attempt to collect on bad checks on your behalf
- File criminal charges if necessary and appropriate

Before submitting checks to the County Attorney's Office for collection and/or prosecution, please read the information below:

DO NOT accept payment once the check has been submitted to this office. If the check writer comes in to redeem the check, refer him/her to this office.

If you enter into any type of verbal or written agreement regarding payment of the check(s), this office cannot accept those checks for collection or prosecution.

If the check is alleged to be a forgery, you need to file a complaint with law enforcement (Flathead County Sheriff's Office; Kalispell, Columbia Falls or Whitefish Police Departments); The County Attorney's office will, in turn, receive the information from the law enforcement agencies. If you suspect a forgery, put the check in an envelope to keep the fingerprints to a minimum. Once law enforcement completes their investigation, a report will be forwarded to the County Attorney's Office for review and/or charges.

We need from you:

Timely submission of your returned checks. Please do not hold them longer than necessary. The sooner we get the checks, the sooner we can begin to recover your money. The check you have accepted may be one of many being prepared for prosecution.

Our **Merchant's Bad Check Worksheet** with a copy of the **Demand Notice (examples below)** you sent to the check-writer.

EXAMPLE DEMAND LETTER

Date: _____

TO: NAME: _____
ADDRESS: _____

CHECKS RETURNED

DATE	BANK DRAWN ON	AMOUNT

Pursuant to §45-6-316 MCA, you are hereby notified that the undersigned holds check(s) enumerated above. The check has not been paid by the financial institution on which it was drawn and has been returned with the notation _____NSF; _____ ACCOUNT CLOSED.

45-6-316 MCA, Issuing a bad check, provides as of 2007:

(1) A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the offender knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks that are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds \$1,000, the offender shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

As provided in §45-6-316 MCA, you are hereby given five (5) days from the receipt of this letter in which to make this check good. If you fail to do so, the matter will be turned over to the County Attorney's Office.

Immediately contact: _____
Name of Individual or Company

Address

Phone

MERCHANT'S BAD CHECK WORKSHEET

Today's Date: _____ Your Phone Number _____

Name of Your Business: _____

Address: _____

Person at your business the County Attorney may contact: _____

Check was made payable to: _____

Dated: _____ (Remember! Checks over 1 year old cannot be submitted)

Check # _____ Amount of Check \$ _____

Has any restitution been taken on this check? _____ YES _____ NO or
Has any merchandise been returned? _____ YES _____ NO

Name of person signing the check: _____

Identification obtained:

MDL # _____

SSN # _____

Date of birth: _____

Residence Address: _____

Any other useful information you have about the person who wrote the check.

Name of bank check as drawn on _____

Why as the check returned? _____ NSF _____ Account Closed _____ Other (Explain)

Please attach a copy of the demand letter that you sent to this form, send both, along with the original returned check to:

Office of the County Attorney
Check Division
P.O. Box 1516
Kalispell, MT 59901